

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Public Health Service  
Indian Health Service  
Rockville, Maryland 20857

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INDIAN HEALTH SERVICE CIRCULAR NO. 89-5

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EEO MANAGEMENT REPRESENTATIVES

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1. PURPOSE. This circular explains how Indian Health Service (IHS) Management Representatives are to attempt to settle all investigated Equal Employment Opportunity (EEO) complaints; There is no corresponding Public Health Service (PHS) or Department of Health and Human Services (DHHS) instruction.
2. COVERAGE. This circular applies to all IHS EEO complaints including Commissioned Corps cases.
3. AUTHORITY. Title VII of the Civil Rights Act of 1964, as amended. The settlement attempts described in this circular are authorized by 29 CFR 1613.217. This Equal Employment Opportunity Commission (EEOC) regulation provides agencies with an opportunity to seek resolution of EEO complaints on an informal basis after the complaints have been investigated. For Commissioned Corps cases, the authority for settlement attempts after investigation is found at Part 2, Section D4f of the Commissioned Corps Personnel Manual. The appointment of Management Representatives is authorized by IHS Circular No. 85-2 of July 12, 1985.
4. BACKGROUND. EEO discrimination complaints can produce a significant drain on the financial and human resources of an organization. The use of Management Representatives in settlement attempts after investigation has proved to be helpful in other Federal agencies, therefore that practice is instituted as a formal procedure with this circular.
5. POLICY. It is the policy of the IHS that settlement attempts be made at the earliest possible time and at the lowest possible level and should be pursued throughout the entire complaint process. Attempts to settle all investigated EEO discrimination complaints by a Management Representative are mandatory.

6. RESPONSIBILITIES

A. Director, IHS (or designee)

1. Forwards case files to Area Director for settlement attempts;
2. Approves/disapproves any EEO settlements reached by a Management Representative;
3. Ensures trained Management Representatives for the Agency.
4. For IHS Headquarters settlement attempts, performs the functions of an Area Director.

B. Director, EEO/Civil Rights (EEO/CR)

1. Provides technical assistance and guidance to the Management
2. Signs off on all settlement agreements and obtains other headquarters and departmental approvals/signatures, as necessary;
3. For IHS headquarters, performs the functions of an Area EEO/CR Manager;
4. Provides training to Management Representatives.

c. Headquarters Personnel Officer

1. Gives informal advice and technical guidance, as requested, to the Area EEO/CR Manager and to the Management Representative;
2. Signs off on IHS Headquarters settlements, and any Area office settlements that require Departmental approval, when such settlements are in accord with personnel law, regulations and policies.

D. Area Director

1. Appoints and ensures training for the Management Representatives for the Area;
2. Assigns cases to Management Representative for settlement attempts;
3. Considers and approves or disapproves all Management Representative proposals for settlement and encourages explorations of alternative approaches to settlement.
4. Implements settlement agreements for IHS Headquarters,

E. Area EEO/CR Manager

1. Provides technical assistance and guidance to Management Representative;
2. Meets with the Management Representative on any settlement proposals and participates in settlement meetings;
3. Prepares settlement documents in proper format;
4. Presents settlement proposals to appropriate officials and transmits them to the next level of authority for review and signatures.

F. Area Personnel Officer

1. Provides technical assistance and guidance to Management Representative, as requested;
2. Signs off on settlement agreement, when it is in accord with personnel laws, regulations and policies.

G. Managers and Supervisors

1. Cooperate with the Management Representative and give information, suggestions and concurrence as necessary/appropriate to achieve a settlement.

7. PROCEDURES

A. Management Representatives

1. Appointment

Each IHS Area Director shall appoint a minimum of two individuals to serve as Area Management Representatives. The Director, IHS, appoints a minimum of three individuals at headquarters. A new representative shall be appointed whenever an incumbent Management Representative is unable or unwilling to complete a term of service. Appointments must be in writing, with copies to the Director, EEO/CR, and to the Area EEO/CR Manager.

2. Qualifications

a. Management Representatives must have the ability to:

- 0 Communicate well with persons of different backgrounds and levels;
- 0 Work within established EEO and personnel principles;
- 0 Understand the problems of employees and the functions of management;
- 0 Analyze facts;
- 0 Be fair and objective; and
- 0 Be able to exercise creativity in arriving at problem solutions.

3. Term of Service

Management Representatives shall serve for an initial term of 2 years, which may be extended for a second term. Service as a Management Representative is an opportunity to develop managerial skills. For that reason, the appointment is usually rotated after two terms of service.

B. Conflict of Interest

A case may not be assigned to a Management Representative when there would be a conflict of interest in that person's involvement in the case. A conflict would exist whenever the complainant, the named official (or the subject of the complaint), or any key witness supervised, supervises or is supervised by the Management Representative. Conflict also exists whenever the Management Representative (1) has a personal friendship with either of the parties, or, (2) feels that he/she could not be objective in the assignment. When there is a conflict with regard to all Management Representatives in an Area (as would be the case if, for example, the complaint was against the Area Director), a Management Representative from headquarters shall be assigned to the case by the Director, IHS.

c. Scope of Responsibilities of Management Representative

1. Representation of IHS-wide interest

The Management Representative function indicates the intent of the Director, IHS, to settle EEO discrimination complaints at the earliest possible time. The Management Representative must weigh the interests of the IHS as a whole (Headquarters and Area Offices) and develop an assessment of the positions of management and the complainant.

2. Independence

The Management Representative must use independent judgment, based on the facts, in making a recommendation to the Area Director/Director, IHS.

3. Negotiating/Settlement Style

The Management Representative has broad discretion in deciding how to approach a possible settlement, but should use the EEO/CR Manager and Personnel Officer as resources for technical information and for feedback on planned approaches.

4. Contact with Complainant and/or Named Official

The Management Representative does not investigate a case, and does not supplement the investigative file. Thus, the Management Representative should not contact either the complainant or the named official to get more facts, when reviewing the file. If more information is needed, the Management Representative shall discuss this with the EEO/CR Manager: a supplemental investigation could be conducted. The Management Representative may contact the complainant or the named official, if clarification is needed on relief that is being sought, but only after discussing this with the EEO/CR Manager. When such contacts occur, the Management Representative shall remind the parties that formal presentations of any particular options for settlement cannot be made without authorization from involved management officials.

5. Issues of Discrimination

The Management Representative may not decide whether or not there was discrimination (based on race, color, religion, sex, national origin, age or handicap) in the case. An official determination on that issue is made only by the Director, IHS. The Management Representative must approach the case as an employment problem in which a reasonable settlement is desired.

D. Steps in the Settlement Process

1. Timing

The Area Director shall assign a case to a Management Representative after the case has been investigated and both parties to the case have had an opportunity to comment on the file. Comments of the complainant will have been forwarded to the Area Director from the Director, EEO-CR, or, the Area Director will receive notice that there were no comments. Supplemental investigations, if any, will have been done.

2. File Review

The Management Representative thoroughly reviews the investigative file, paying particular attention to the EEO Counselor's recommendations for informal adjustment, usually found on Page 6 of form HHS-652, "Final EEO Counseling Report.?"

3. Developing Ideas for Settlement

The Management Representative will discuss any issues that require more background or technical knowledge with the EEO/CR Manager and Personnel Officer of the Area Office, appropriate managers and supervisors, necessary technical offices (for example, the Regional Personnel Office or a budget office) and with IHS headquarters as necessary, and may use all these officials as resources for feedback on settlement ideas.

4. Preparation of Memorandum of Recommendation for Settlement

The Management Representative shall prepare a Memorandum of Recommendation for Settlement. The memorandum shall contain a proposal for settlement and a justification for the proposal which shall be submitted to the Area Director for consideration and action. The Management Representative's independent judgment is critical. The Management Representative may revise the memorandum after consultation with the Area Director, but only if that is mutually agreeable.

5. Processing of Proposed Settlement Document, when Accepted by Area Director

- a. When an Area Director accepts a Management Representative's proposal for settlement, the Area EEO/CR Manager shall prepare a settlement document in the format provided in DHHS Instructions 1613-3-U.
- b. The Area EEO/CR Manager shall obtain input on the settlement document from the Director, EEO/CR, Personnel Officer, and Chief, Complaints Section, make a written record of comments received, and make appropriate changes in the document.

- c. An adjusted document will be signed by: (1) Management Representative, (2) Area EEO/CR Manager, (3) Area Personnel Officer, (4) Area Director, (5) Director, EEO/CR and (6) Director, IHS.
  - d. The proposed settlement document requires the approval of a Regional Personnel Officer (RPO) when it involves a personnel action. An RPO may also require that proposed personnel actions be subject to RPO approval. RPOs may require that settlements involving personnel actions be approved by the RPO.
  - e. If the proposal involves an exception to a merit promotion plan, any retroactive personnel action which gives a financial benefit, or attorney's fees, departmental approval must be obtained. The document shall be submitted for signature by the Regional Personnel Officer and then to the Director EEO/CR, who will see that the document receives the proper clearances/signatures at the Headquarters and DHHS levels.
6. Presentation of Proposed Settlement to Complainant
- a. Whenever Departmental clearance is required and such clearances have been obtained on the settlement proposal, the Director, EEO/CR, shall inform the Management Representative, in writing, that the proposal may now be offered to the complainant. When Headquarters clearances are not required, the Management Representative may offer a proposal to a complainant once Area clearances and approvals have been obtained.
  - b. The Area EEO/CR Manager shall schedule a meeting with the complainant and/or the complainant's representative. The Management Representative shall present the proposal and either obtain signatures of acceptance or negotiate on further changes to the proposal. The Area EEO/CR Manager shall participate in this meeting to provide technical assistance.
  - c. The signed document shall be sent to the Director, EEO/CR, for signature and decide whether the case requires other officials' signatures, and if so, obtain such signatures before presenting it to the Director, IHS, for final approval.

7. Follow-up Processing of a Settlement


The Area EEO/CR Manager is responsible for follow-up on the implementation of the settlement terms. Regular reports to the Director, EEO/CR, are required until full implementation has been achieved.

8. Follow-up processing if there is no settlement

- a. When the Area Director does not accept the Management Representative's Recommendation for Settlement, a Memorandum of Recommendation shall be sent to the Director, EEO/CR, with a report of the results of the settlement attempt, as required *in* Paragraph 9(a).
- b. When the complainant refuses to accept the Management Representative proposal and no acceptable alternative proposal can be developed, the Area EEO/CR Manager shall inform the Director, EEO/CR of this fact, in writing, and return the investigative file, as provided in paragraph 9(a).
- c. If either (a) or ('b) occurs, the Director, EEO/CR shall prepare a proposed disposition of the case may continue to seek a settlement in the case according to his/her discretion.

9. Timeframes and Documentation

- a. Results of the settlement attempt must be put in writing and returned, with the investigative file, to the Director, EEO-CR, within 30 days of the assignment of the case to the Management Representative. Names of individuals in attendance, date of the settlement attempt, and a specific statement(s) as to the reason an offer(s) was refused by the complainant or management, must be included in the correspondence to the Director, EEO-CR.
- b. Requests for extension of the 30-day period must be made to the Director, EEO-CR, and will be granted if the requesting office shows how the extension will assist in a resolution attempt that is already in process.

  
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Director